Furthermore, strict criminal liability forces responsible members of the marine transportation industry to face and extreme dilemma in the event of an oil spill—provide less than full cooperation and response as criminal defense attorneys will certainly direct, or cooperative full despite the risk of criminal prosecution that would result from any additional actions or statements made during the course of the spill response. The only method available to companies and their employees to avoid the risk of criminal lability completely is to get out of the Marine oil transport business altogether.

Mr. Speaker, in May 1998, the House Coast Guard and Maritime Transportation Subcommittee conducted oversight hearing on criminal lability for oil pollution. The Coast Guard, the primary federal maritime agency tasked with the implementation and enforcement of OPA90, testified at that hearing that it does not rely on strict criminal liability statutes in assessing culpability for oil split incidents. With the support of other organizations, including the Chamber of Shipping of America, INTERTANKO, the Transportation Institute, and the Water Quality Insurance Syndicate (WQIS), American Waterways Operators (AWO) and two tank vessel captains testified as to the adverse impact that strict criminal liability has on the oil spill prevention and response objectives of OPA90. Notably, one tank vessel captain observed that ''strict criminal liability does not make [him] do [his] job better; it only produces counterproductive stress''. He continued by stating the following: ''Because of the current [criminal lability'' situation I cannot and will not encourage my children to follow in my footsteps. Nor can I encourage anyone else to enter the marine petroleum transportation business. Yet the industry needs good people. Strict criminal liability is a tremendous deterrent to anyone considering entering the industry at this time.''

Similarly, the other tank vessel captain testified that responsible vessel owners and operators do everything humanly possible to avoid accidents, but that ''the sea being a place of infinite peril, if accidents occur, despite human precautions, we must use all of the marines' skills to contain damage and to get the oil out of the water''. He continued by stating that the ''increased emphasis on applying criminal sanctions to incidents where oil gets into the water, regardless of whether the spill is caused by reckless or grossly negligent human actions, will undermine our ability to respond successfully in the case of the spill.'' The captain further stated that the ''masters, officers and crew of tank vessels should be the best in the business'', but that ''if they are driven from this area by criminal enforcement policies, we will end up with mediocrity where we should have excellence.'' I concur with these observations. Strict criminal liability does not improve the marine transportation industry's ability to attract or retain experienced vessel masters and crews, and does not further the oil spill prevention and response goals of OPA90.

Mr. Speaker, again in March 1999, the House Coast Guard and Marine Transportation Subcommittee and the House Water Resources and Environment Subcommittee conducted an oversight hearing to review the implementation of OPA90 on the 10th anniversary of the EXXON VALDEZ oil spill in Alaska. Notably, the issue of criminal liability in oil spill incidents are raised several times during the hearing where AWO, the American Petroleum Institute (API), INTERTANKO, and the Chamber of Shipping of America all stated that the threat of strict criminal liability of oil pollution incidents requires immediate reform and that the issue is their top legislative priority.

The Coast Guard recently confirmed that its ''criminal prosecution of environmental crimes is reserved for only the most egregious cases, where evidence of willful misconduct, culpable negligence, failure to report a spill, or attempts to falsify records, is considered with significant harm to the environment or the thread of such harm.'' However, despite the fact that the ''Coast Guard has never a case based on strict liability violations'', other agencies, including the U.S. Department of Justice, have prosecuted at least four vessel pollution cases since the enactment of OPA90 using strict criminal liability statutes. The availability and use of such statutes continues to undermine cooperative and effective oil spill prevention and response efforts.

Mr. Speaker, the legislation we are introducing today will not change the tough criminal sanctions, that were imposed in OPA90. Rather, the legislation will reform the preeminent role of OPA90 as the statute which provides the exclusive criminal penalties for oil spills. In so doing, it will eliminate the unjustified use of strict liability statutes that undermine the very objectives which OPA90 sought to achieve, namely to enhance the prevention of and response to oil spills.

RECOGNIZING AN EAST TEXAS STUDENT

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. HALL of Texas. Mr. Speaker, I rise today in recognition of Taylor Garrett of Van, TX, for his research efforts in Madrid, Spain, last summer that formed the basis for his Honors thesis during his senior year at Southwestern University in Texas. He and his professor, Dr. Daniel Castro, spent 6 weeks at the Archivo Historico Nacional de Madrid researching 16th to 19th century documents dealing with the Spanish Inquisition. To be chosen for this research opportunity was a great honor, and Taylor was chosen due to his proficiency in the Spanish language and his strong interest in the history of this period.

Once in Madrid, these two researchers catalogued materials from archives in an effort to discover the role of women and other ''voiceless'' constituencies during the colonial Inquisition. For 6 weeks Taylor's main role was to translate paleography—a symbol-based language—into English. Southwestern University supports collaborative research between students and faculty, and I am proud that this young Texan from my district was selected to participate in this important project.

Mr. Speaker, I am pleased to have the opportunity to recognize the achievements of Taylor Garrett and to commend him for his enthusiasm for learning, his willingness to work hard, and his commitment to high academic standards—qualities that are crucial to our Nation's continued leadership in research and discovery efforts in all fields.

THE FERES DOCTRINE

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. KANJORSKI. Mr. Speaker, I rise to seek recognition to introduce a bill that will overturn what has come to be known as the ''Feres doctrine.'' In introducing this legislation I hope to rectify a grave injustice that has been perpetuated upon our servicemen and women and pay tribute to a truly inspirational young woman, Kerryn O'Neill. Kerry O'Neill grew up in Kingston, Pennsylvania in my Congressional District, and I had the pleasure of nominating her for admission to the United States Naval Academy.

On December 1, 1993, Kerry O'Neill, a ''graduate with the distinction'' of the United States Naval Academy in the top ten percent of her class, was brutally murdered by her former fiance, Ensign George Smith, while sitting in her on-base apartment watching a movie with a friend, who was also killed. Ensign Smith, who was to have commenced his first tour of duty on a nuclear submarine the next day, then shot himself.

O'Neill had a superb record at the Academy setting athletic records for the fastest time run by an Academy cross-country runner and for the indoor and outdoor track 5,000 meter runs. In 1992 she was the first female athlete in any Naval Academy sport to qualify for the NCAS Division I Championships. She was also the recipient of the Vice Admiral William P. Lawrence Sword as the outstanding female athlete in her class.

Her accomplishments, however, paled in comparison to her intelligence, dedication, and enthusiasm, which made her an ''inspiration'' to those who knew her. As James E. Brockington, Jr., Commander, USN wrote of Kerry, ''Gone too soon is that smile that brightened the darkest of days. Lost are those sparkling eyes that mirrored our quest for perfection. A leader, a dreamer, a source of unparalleled excellence—she is gone too soon.''

In attempting to understand this tragedy, and what could have caused Ensign Smith to commit such murderous act, Kerry's parents learned that Ensign Smith had scored in the 99.99th percentile for aggressive/destructive behavior in Navy psychological tests. To evaluate his psychological fitness for the unique demands of submarine duty, Ensign Smith had, two months before the shooting, been required to submit to the Navy's ''Subscreen'' test. Ensign Smith scored more than four standard deviations above the normal levels for aggressive/destructive behavior and more than two standard deviations above normal levels in six other categories. Because Ensign Smith's results were well above the two-standard deviations above norms in multiple categories, under non-discretionary Navy regulations his abnormal test results were referred to a Navy psychologist, who in turn was required to conduct a full evaluation. The Navy civilian psychology responsible for reviewing the unusual scores and evaluating Smith, simply fail to conduct any such review or evaluation. This failure to review was a clear violation of Navy regulations (Compl. Paragraphs 10–15; Pet. App. 15a–17a). A psychological evaluation could have identified the potential for this destructive act and possibly prevented this tragedy from occurring.

Based on this negligent behavior by the Navy psychologist, the O'Neills filed suit seeking damages for the injury and death of their daughter under the Federal Tort Claims Act. Their case was dismissed pursuant to the Feres doctrine, based on the reasoning that because at the time of her death Kerry O'Neill was in her military quarters and was on active duty status, her injuries and death were ''incident to military service.''

In the 1950 case of Feres v. United States, the Supreme Court created a broad exception to the federal government's general liability under the Federal Tort Claims Act, where the service member's injury arises out of or is ''in the course of activity incident to service.'' Since this initial ruling, the Court has departed from the original justifications for its holding and has expanded the ruling based on vague and broad policy justifications, not intended by Congress when it enacted the Federal Tort Claims Act. In passing the Federal Tort Claims Act, Congress intended to prohibit tort claims against the federal government by a military member or his or her family only when the injuries arise ''out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.'' Kerry O'Neill's death was the result of a social relationship and the negligent failure of a Navy civilian psychiatrist to further evaluate Ensign Smith, not due to her involvement in combat, and in actuality, not incident to her service.

Congress wrote the statute to prohibit claims for injuries ''arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war,'' because we do not want to allow soldiers or their families to be able to sue the government in a combat situation, when countless decisions are made that ultimately result in the death or injury of the service member. In order to protect the integrity of military command decisions, we cannot have any and all instances of death or injury brought and questioned by juries.

Such considerations, however, do not necessitate that military personnel lose their ability to recover for clearly negligent behavior by the federal government, just as every other individual in this country is allowed to do. Unfortunately, the individuals hurt most by the Feres doctrine are those men and women who commit their lives to the service of their country. These individuals should be protected by our laws, not punished. As case after case has demonstrated, the consequences of this doctrine are unjust. Private Charles A. Richards, Jr., who was off-duty, was killed by an Army truck, whose driver had run a red light. He was driving home from work at Fort Knox to care for his then-pregnant wife. His wife was unable to recover damages. Another service woman, who had given birth to twins, discovered one of her twins suffered bodily injury and the other died due to the negligent prenatal care at a military hospital. She was unable to recover damages. Such unjust outcomes were clearly not the intention of Congress.

The Feres doctrine has been the subject of harsh criticism. In dissenting from the denial of rehearing en banc in Richards v. United States, four judges of the Third Circuit, including Chief Judge Becker, called the Feres doctrine a ''travesty'' and urged the Supreme Court to consider the case. Numerous law review articles have also been written on the case, decrying the doctrine. Additionally, Feres's critics have included at least three current Justices of the Supreme Court, who have argued that Feres was wrong when decided.

My legislation, like the companion bill introduced by the senior Senator from the Commonwealth of Pennsylvania, simply seeks to overturn the judicially created Feres doctrine, while leaving in place the original intention of Congress to prohibit tort claims arising out of combatant activities during times of war. The legislation amends the Federal Tort Claims Act to specifically provide that the Act applies to military personnel on active duty to the same as it applies to anyone else. There is no reason to deny our military men and women the just compensation they deserve when they are injured or killed as a result of the negligent actions of the Federal government or its agents outside the heat of combat.

Mr. Speaker, the legislation will not bring back Kerryn O'Neill, or the other two service members, who were harmed by their government in this one instance. Nor will this legislation bring compensation to their families. But hopefully, this legislation will right this unjust doctrine, and help to prevent similar tragedies in the future. We need to address this situation as quickly as possible and I urge my colleagues to support this bill.

HONORING CARYN BART OF RIVER EDGE, NEW JERSEY

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. ROTHMAN. Mr. Speaker, today I pay tribute to Caryn Bart of River Edge, New Jersey, a nurse who works at Holy Name Hospital in Teaneck, who went far beyond the call of duty to help a family with their struggle through a horrible tragedy.

Armando and Erika Herrera, from Garfield, New Jersey, who both work at Holy Name Hospital, recently suffered the tragic loss of their seven-year-old son, Daniel. On June 9, 2000, mother and son traveled to visit relatives in Hungary. Two days later, while Mrs. Herrera lay down flowers at her mother's grave, an elevated headstone tipped over, fell, and fractured Daniel's skull.

As Mr. and Mrs. Herrera were naturally stunned and dazed by these events, not knowing what to do, Caryn Bart took it upon herself to help the Herrera's in their time of need. Ms. Bart, who has four children and is married to Steve Bart, became a registered nurse in 1997 after graduating from Bergen Community College.

Through Ms. Bart's facilitation, the Herreras received calls from doctors in London, Helsinki and New York. A special flight was arranged to take them to a children's hospital in London. All that could have been done was done. Unfortunately, Daniel died of his injuries a few days later.

Although nothing can help Armando and Erika Herrera through this terrible loss, the efforts of Ms. Bart must be acknowledged. She is truly a great American and worthy of much praise and thanks. What Ms. Bart did is a wonderful example of the gift of loving kindness. She is an inspiration and an example of what compassion generosity are for all of us. Angels walk among us and many of the nurses of America, like Caryn Bart, are these angels.

FINANCIAL INSTITUTIONS SHOULD PROVIDE LENDING CAPITAL FOR ENVIRONMENTALLY RESPONSIBLE DRY AND WET CLEANING SMALL BUSINESSES

HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. MANZULLO. Mr. Speaker, today, I am introducing a Sense of the Congress Resolution that would urge financial institutions to promote environmentally responsible dry and wet cleaning processes and to work with business enterprises to provide streams of capital to protect the environment.

I am offering this important resolution to help bring to light the situation that our nation's small dry and wet cleaning businesses face with regard to the cleaning process that most of the small cleaning establishments utilize—namely, percholoroethelyne (perc) and petroleum based solvents. Perc and petroleum based solvents are known pollutants; they contaminate the air, land and groundwater. However, there are other options available to small dry and wet cleaning businesses.

On Thursday, July 20, 2000, the Small Business Subcommittee on Tax, Finance and Exports, which I chair, held an extraordinarily important hearing on H.R. 1303, the Environmental Dry Cleaning Tax Credit Act. This bipartisan bill, introduced jointly by Representatives DAVE CAMP and DAVID PRICE, is an incentive-based approach to resolving the complex environmental problems the dry cleaning industry faces as a result of its use of perc, a hazardous waste when it is emitted into the air and groundwater. There are nearly 35,000 dry cleaners across the country. Most employ only a handful of workers. They are truly small businesses.

H.R. 1303 provides a 20 percent tax credit toward the purchase of new equipment that uses non-hazardous waste producing wet and dry cleaning technology. Recent technological developments utilize carbon dioxide—the same chemical compound found in sodas (or pop, depending on what part of the nation you represent). Carbon dioxide is obviously not harmful to the environment, since we consume it and our vegetation thrives on it.

Like all new ideas on the market, this technology is expensive. That is exactly why the tax credit is necessary. While there are costs associated with H.R. 1303, they are far outweighed, in our view, by the expenses associated with cleaning up the dry cleaning solvents that have been used for decades. For example, in North Carolina, it is estimated that once the assessment and remediation for sites contaminated from the use of perc, costs using the state's own ''cost-per-site'' estimates could approach $72 million to $90 million annually. The State of Florida has estimated that it has 2,700 contaminated dry cleaning sites that are requiring almost $1.5 billion needed for clean-up. The numbers are staggering for nationwide clean up costs, which could approach nearly $20 billion—far outweighing the costs estimated for H.R. 1303.